STATE OF MICHIGAN

COURT OF APPEALS

RIZA MESIGIL and ELAINE MESIGIL, Plaintiffs/Counter-Defendants-Appellants,	UNPUBLISHED December 28, 2004
v	No. 250067 Oceana Circuit Court
DENNIS J. SMITH and KATHY K. SMITH, Defendants/Counter-Plaintiffs-Appellees.	LC No. 02-003285-CH

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiffs Riza and Elaine Mesigil, appearing in propria persona, appeal as of right from a judgment following a bench trial that quieted title to a disputed strip of property in favor of defendants Dennis and Kathy Smith. We affirm.

A survey conducted before plaintiffs purchased the property in August of 2001, established the 1/16th line of Section 24, Shelby Township as the western boundary separating it from defendant's property. This was approximately forty feet west of a tree and brush line not mentioned in the survey. At trial, the parties stipulated that the survey accurately reflected the 1/16th line, that the line was west of the trees, and that the survey was the basis for plaintiffs' claim.

On appeal, plaintiffs contend that defendants presented insufficient evidence to show that they owned the strip of land located between the 1/16th line and the trees by acquiescence. We disagree.

"Actions to quiet title are equitable in nature; this Court reviews such actions de novo." *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). But we review factual findings made by a trial court sitting without a jury for clear error. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000), (*Walters II*). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Id.*

Defendants in the instant case claim possession under the theory of acquiescence for the statutory period. As discussed in *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993):

> The law of acquiescence is concerned with a specific application of the statute of limitations to cases of adjoining property owners who are mistaken about where the line between their property is. Adjoining property owners may treat a boundary line, typically a fence, as the property line. If the boundary line is not the recorded property line, this results in one property owner possessing what is actually the other property owner's land. Regardless of the innocent nature of this mistake, the property owner whose land is being possessed by another would have a cause of action against the other property owner to recover possession of the land. After fifteen years, the period for bringing an action would expire. The result is that the property owner of record would no longer be able to enforce his title, and the other property owner would have title by virtue of his possession of the land.

In the instant case, the trees in question were obscured at the time of the initial survey, but a subsequent survey showed a straight line of oak trees and some evidence of an old fence. Ralph Andrews, Kathy Smith's father and defendants' predecessor in interest, recalled installing the fence for livestock in the 1940's, and planting a cherry orchard, the remnants of which remain visible, up to the oaks in the 1960's. Moreover, defendants presented testimony from Jack Lake, one of plaintiffs' predecessors in interest, who stated that for the ten years he lived on the property, he believed the trees were the western boundary. Lake also stated that he informed Dan Brugh, his immediate successor as owner and the man from whom plaintiffs purchased the property, that this constituted the property line. Although defendants presented testimony from only one prior owner of plaintiffs' parcel, substantial circumstantial evidence existed showing that other prior owners had likewise recognized the tree line as the boundary.

Unlike adverse possession, which requires clear and cogent evidence, "the proper standard applicable to a claim of acquiescence is proof by a preponderance of the evidence." *Walters v Snyder*, 225 Mich App 219, 223; 570 NW2d 301 (1997) (*Walters I)*. Defendants presented evidence sufficient to meet this standard and the trial court did not clearly err in finding acquiescence. We further note that, contrary to plaintiffs' argument, defendants were not required to present documentary evidence establishing acquiescence. Although plaintiffs' survey unequivocally shows the "true" boundary located at the $1/16^{th}$ line, plaintiffs failed to present any evidence to counter defendants' proofs that the oak trees had been treated as the boundary for the fifteen-year statutory period. It is well settled that "a boundary line long treated and acquiesced in as the true line ought not be disturbed on new surveys." *Dupont v Starring*, 42 Mich 492, 494; 4 NW 190 (1880).

Plaintiffs next contend that the trial court failed to address defendants' violation of an injunction prohibiting either party from altering the landscaping or erecting new structures on the disputed area until the court had rendered judgment with respect to the dispute. In essence, plaintiffs assert that defendants should have been held in contempt for violating the injunction. We review a trial court's decision regarding the issuance of an order of contempt for an abuse of discretion. *Brandt v Brandt*, 250 Mich App 68, 73; 645 NW2d 327 (2002). Plaintiffs raised this issue in a series of petitions filed after the close of the trial, but before the trial court entered its

final judgment. The petitions alleged that the violations occurred on June 12 and 22, 2003, after the trial court issued and plaintiffs received a written opinion indicating the court's intent to quiet title in favor of defendants. Although a final judgment had not yet been rendered, it was clear that judgment in favor of defendants was forthcoming and we find no abuse of discretion.

Plaintiffs also assert that the trial court unjustifiably excluded several briefs and petitions, including more than thirty photographs, submitted by plaintiffs before and after the trial. Because of this, plaintiffs argue that the court failed to consider all of the facts when making its decision. We disagree.

Decisions regarding the admissibility of evidence are reviewed for abuse of discretion. *Peña v Ingham County Road Comm'n,* 255 Mich App 299, 303; 660 NW2d 351 (2003). In the instant case, the trial court admitted into evidence the survey upon which plaintiffs' claim was based. Additionally, Plaintiff Riza Mesigil gave a brief opening statement summarizing the contents of plaintiffs' trial briefs and gave sworn testimony regarding the case. Thus, the information and arguments presented in these documents were heard by the trial court.

Furthermore, the trial court stated that plaintiffs could have the photographs admitted if they were presented in an "evidentiary fashion." In order to lay a proper foundation for the admission of photographic evidence, a party must present testimony from a person familiar with the scene depicted stating that the photograph accurately represents it. *Knight v Gulf & Western Properties, Inc,* 196 Mich App 119, 133; 492 NW2d 761 (1992). And a party proceeding in propria persona is held "to the same standard in the presentation of his case as would be required of a member of the bar." *Baird v Baird,* 368 Mich 536, 539; 118 NW2d 427 (1962). See also *Bachor v Detroit,* 49 Mich App 507, 512; 212 NW2d 302 (1973) and *Amorello v Monsanto Corp,* 186 Mich App 324, 330-331; 463 NW2d 487 (1990). Because plaintiffs made no attempt to lay a proper foundation, the trial court did not abuse its discretion by failing to review the photographs. Even had the trial court considered the briefs and photographs, nothing in this material controverted the evidence tending to establish that the line of trees had been used as the boundary between properties for longer than the period required for a finding of acquiescence.

Finally, plaintiffs argue that the court's closing comments and its failure to stop defendants from entering the disputed strip while its decision was pending clearly indicate that the court was biased in favor of defendants. We disagree.

Trial judges are presumed to be fair and impartial and litigants who challenge this presumption bear the heavy burden of proving otherwise. *In re Susser Estate,* 254 Mich App 232, 237; 657 NW2d 147 (2002). Furthermore, judicial rulings alone rarely constitute grounds for a motion alleging bias or partiality. *Cain v Dep't of Corrections,* 451 Mich 470, 496; 548 NW2d 210 (1996).

At the close of the proceedings in the instant case, the trial court stated, "You don't have to get up, we're among friends and neighbors. Anybody who has lived out there for 71 years is a friend of mine." Rather than showing partiality, this comment, apparently directed at Andrews, constituted an attempt to be courteous by relieving an elderly person of the formality of standing at the conclusion of a court session. Plaintiffs other allegations of bias merely concern the fact that the trial court ruled in favor of defendants. Consequently, plaintiffs have failed to overcome the heavy presumption of judicial impartiality.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra